



**City of Bellevue
Development Services Department
Land Use Staff Report**

Proposal Name: Tran Residence

Proposal Address: 6208 120th Avenue SE

Proposal Description: Critical Areas Land Use Permit to construct a new single-family residence and associated improvements that proposes to reduce a 75-foot toe-of-slope structure setback to 5 feet in order to establish the improvements on a vacant site.

File Number: 18-117479-LO

Applicant: Erik Hall, Mockingbird Design Build

Decisions Included: Critical Areas Land Use Permit
(Process II. 20.30P)

Planner: Drew Folsom, Land Use Planner

**State Environmental Policy Act
Threshold Determination:** **Exempt**

Director's Decision: **Approval with Conditions**
Michael A. Brennan, Director
Development Services Department

By: Reilly Pittman, Acting Planning Manager
Elizabeth Stead, Land Use Director

Application Date: June 29, 2018
Notice of Application Date: July 26, 2018
Decision Publication Date: January 20, 2022
Appeal Deadline: February 3, 2022

For information on how to appeal a project proposal, visit the Permit Center at City Hall or call 425-452-6800. Appeals must be made to the City of Bellevue City Clerk's Office by 5 p.m. on the date noted above for the appeal deadline.

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Documents Referenced in Report from Project File

1. Site and Mitigation Plan – Enclosed
2. Critical Areas Report and Comment Responses – In File
3. Geotechnical Report and Comment Responses – In File
4. Survey, Permit Forms, and Communication – In File

I. Proposal Description

The applicant proposes to construct a new residence, driveway, patios, landscaping, and associated improvements on a vacant site. The proposed area for development is located approximately 5-10 feet from the toe of a steep slope critical area with the result that the development is mostly within a 75-foot toe-of-slope setback that extends from a toe-of-slope east of the house. Based on the location of the steep slope and configuration of the property any proposed development would require a reduction of the steep slope setback. The project avoids impacts to steep slope critical areas but proposes the reduction of the 75-foot toe-of-slope structure setback to a minimum of 5 feet.

The site also has a Native Growth Protection Area (NGPA) containing the steep slope, and a Retained Vegetation Area (RVA). No disturbance, other than mitigation planting, is proposed within the NGPA. The project will remove or create habitat snags of 11 trees on the site within the structure setback and RVA. Project impacts are proposed to be mitigated by the installation of mitigation planting that will be installed within the steep slopes, RVA, and NGPA on the site. The steep slopes currently have an understory of invasive species that will be replaced with native vegetation proposed as mitigation.

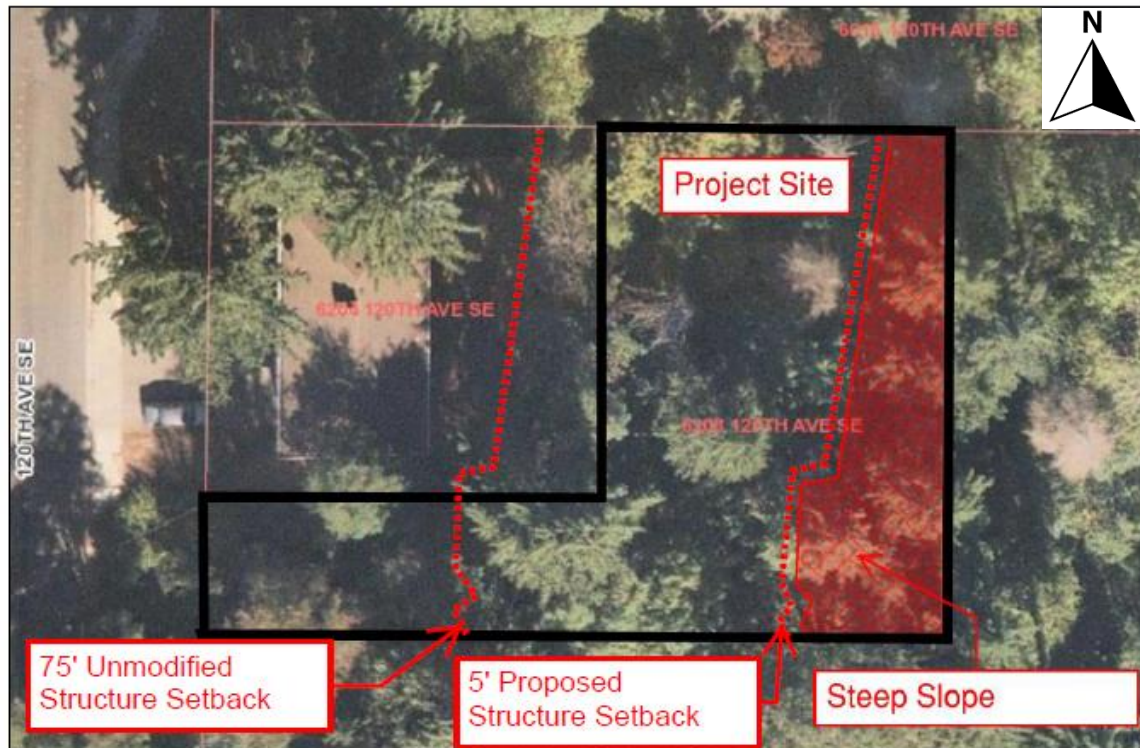
A Critical Areas Land Use Permit (CALUP) with a Critical Areas Report is required to modify and disturb steep slope structure setbacks. Per LUC 20.25H.230, the critical areas report is intended to provide flexibility for sites where the expected critical areas functions and values are not present or severely limited due to degraded conditions. The existing site has high habitat value due to being undeveloped and having a tree canopy. However, the site is degraded in function and lacks the vegetative structural diversity found on sites with higher-quality forested steep slopes. Therefore, the steep slope and structure setback are not fully performing their expected ecological functions. The submitted critical areas report documents that the ecological conditions of the existing steep slopes on the site are degraded and that the proposed mitigation will increase the ecological functions and values beyond the existing condition. Approval of a Critical Areas Land Use Permit is required for the proposed impacts and any temporary disturbance that will be restored. See reference document 1 for project site plan and figure 1 for a depiction of the project.

[illegible]

A. Site Description

The project site is located at 6208 120th Avenue SE in the Newport Hills subarea of Bellevue. The site is a flag-shaped lot with the access strip adjacent to 120th Avenue SE to the west. The site is adjacent to developed residential properties to the west, proposed Newport View plat development to the south and east, and the Korean Pilgrim Presbyterian Church to the north. The site generally slopes down from the east to the west, toward the street, with steep slopes comprising the eastern portion of the site. The forest canopy on the site consists of a mixed forest consisting of Douglas fir, big leaf maple, black locust, and Pacific madrone. The understory varies and includes native and invasive plants that dominate patches on the property. In addition, there are designated native growth protection areas (NGPA) and a retained vegetation area (RVA) on the project site. See figure 2 for the existing site.

Figure 2



B. Zoning

The property is zoned R-5, single-family residential, and the proposed house and improvements are allowed in this zoning district.

C. Land Use Context

The property has a Comprehensive Plan Land Use Designation of SF-H (Single Family High Density). Construction of a home and improvements is consistent with this land use.

D. Critical Areas On-Site and Regulations

i. Geologic Hazard Areas

Geologic hazards pose a threat to the health and safety of citizens when commercial, residential, or industrial development is inappropriately sited in areas of significant hazard. Some geologic hazards can be reduced or mitigated by engineering, design, or modified construction practices. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas is best avoided (WAC 365-190).

Steep slopes may serve several other functions and possess other values for the City and its residents. Several of Bellevue's remaining large blocks of forest are located in steep slope areas, providing habitat for a variety of wildlife species and important

linkages between habitat areas in the City. These steep slope areas also act as conduits for groundwater, which drains from hillsides to provides a water source for the City's wetlands and stream systems. Vegetated steep slopes also provide a visual amenity in the City, providing a "green" backdrop for urbanized areas enhancing property values and buffering urban development.

ii. Habitat Associated with Species of Local Importance

Urbanization, the increase in human settlement density and associated intensification of land use, has a profound and lasting effect on the natural environment and wildlife habitat (McKinney 2002, Blair 2004, Marzluff 2005, Munns 2006), is a major cause of native species local extinctions (Czech et al 2000), and is likely to become the primary cause of extinctions in the coming century (Marzluff et al. 2001a). Cities are typically located along rivers, on coastlines, or near large bodies of water. The associated floodplains and riparian systems make up a relatively small percentage of land cover in the western United States, yet they provide habitat for rich wildlife communities (Knopf et al. 1988), which in turn provide a source for urban habitat patches or reserves. Consequently, urban areas can support rich wildlife communities. In fact, species richness peaks for some groups, including songbirds, at an intermediate level of development (Blair 1999, Marzluff 2005). Protected wild areas alone cannot be depended on to conserve wildlife species. Impacts from catastrophic events, environmental changes, and evolutionary processes (genetic drift, inbreeding, colonization) can be magnified when a taxonomic group or unit is confined to a specific area, and no one area or group of areas is likely to support the biological processes necessary to maintain biodiversity over a range of geographic scales (Shaughnessy and O'Neil 2001). As well, typological approaches to taxonomy or the use of indicators present the risk that evolutionary potential will be lost when depending on reserves for preservation (Rojas 2007). Urban habitat is a vital link in the process of wildlife conservation in the U.S.

III. Consistency with Land Use Code Requirements:

A. Zoning District Dimensional Requirements:

The R-5 zoning dimensional requirements found in LUC 20.20.010 are generally met by the proposed house, but conformance will be verified during building permit review. All setbacks, height, lot coverage by structure, and impervious surface may be required to be verified by survey through the building permit inspection process. **See Permit Related Conditions of Approval in Section X of this report.**

B. Noise Code Requirements BCC 9.18

All noise generated, including construction noise, is regulated by BCC 9.18. Noise related to construction is exempt from the provisions of BCC 9.18 between the hours of 7 am to 6 pm Monday through Friday and 9 am to 6 pm on Saturdays, except for Federal holidays and as further defined by the Bellevue City Code. Noise emanating from construction is prohibited on

Sundays or legal holidays unless expanded hours of operation are specifically authorized in advance. Requests for construction hour extension must be done in advance with the submittal of a construction noise expanded exempt hours permit.

C. Critical Areas Overlay District LUC 20.25H

The City of Bellevue Land Use Code Critical Areas Overlay District (LUC 20.25H) establishes performance standards and procedures that apply to development on any site which contains in whole or in part any portion designated as critical area, critical area buffer or structure setback from a critical area or buffer. There are no modifications to critical areas, or critical area buffers proposed. The project proposes to reduce a 75-foot toe-of-slope structure setback which is not subject to performance standards in LUC 20.25H.

IV. Public Notice and Comment

Application Date:	June 29, 2018
Public Notice (500 feet):	July 26, 2018
Minimum Comment Period:	August 9, 2018

The Notice of Application for this project was published in the City of Bellevue weekly permit bulletin on July 26, 2018. It was mailed to property owners within 500 feet of the project site. A neighbor to the southeast of the property submitted comments regarding the proposal and concerns about potential landslide hazard.

Staff Response: The applicant submitted a geotechnical report prepared by Aegis Engineering, LLC, dated June 2, 2017, and an addendum dated September 21, 2020. Due to changes in the proposal, an additional geotechnical letter prepared by The Riley Group, Inc., dated August 27, 2021, was submitted. A steep slope was identified in the southeast portion of the site however, none of these documents identified a landslide hazard being present on the site. The Riley Group, Inc. reviewed the proposal and states a setback of 5 feet from the toe of the slope is sufficient to protect the proposed residence and neighboring properties.

V. Summary of Technical Reviews

A. Clearing and Grading

The Clearing and Grading section of the Development Services Department has reviewed the proposed site development for compliance with clearing and grading codes and standards. The clearing and grading staff has approved the application with conditions regarding geotechnical review of the final construction plans, monitoring during construction, and rainy season restrictions. **See Geotechnical and Permit Related Conditions of Approval in Section X of this report.**

B. Utilities

The Utilities section of the Development Services Department reviewed and approved the proposal. Utilities will be reviewed as part of the building permit and utilities permit.

VI. State Environmental Policy Act (SEPA)

The proposal is exempt from SEPA review per WAC 197-11-800(1). No work is proposed in a steep slope critical area.

VII. Changes to Proposal Due to Staff Review

The applicant revised the proposal to remove all proposed structures and disturbance within the NGPA and provided additional information regarding habitat functions on the site.

VIII. Decision Criteria

A. 20.25H.255.A Critical Areas Report Decision Criteria

Except for the proposals described in subsection B of this section, the Director may approve, or approve with modifications, the proposed modification where the applicant demonstrates:

- 1. The modifications and performance standards included in the proposal lead to levels of protection of critical area functions and values at least as protective as application of the regulations and standards of this code;**

Finding: The submitted critical areas report documents that the existing site has moderate habitat value and potential but there are degraded ecological functions as the site has large areas of invasive understory vegetation. The proposal locates the proposed house, driveway, and other improvements below the steep slope on the site and avoids disturbance of the slope entirely other than mitigation planting. The biologist found that the resulting site design will retain habitat functions as well as providing enhanced habitat function through the proposed mitigation planting.

- 2. Adequate resources to ensure completion of any required mitigation and monitoring efforts;**

Finding: A mitigation and monitoring plan was created for the project to establish new vegetation. The proposed mitigation proposes to remove invasive species as well as the planting of 19 native trees, shrubs, and ground cover. The plan includes performance standards and provides a five-year monitoring program to ensure successful installation. A cost estimate is required to be submitted under the future building permit for the cost of installation and five years of maintenance and monitoring. An installation surety will be required at 150 percent of the cost of plants, materials, and labor and a maintenance surety at 20 percent of the cost estimate. **See Mitigation and Monitoring Related Condition of Approval in Section X of this report.**

3. **The modifications and performance standards included in the proposal are not detrimental to the functions and values of critical area and critical area buffers off-site; and**

Finding: The submitted critical areas report documents that the functions and values of the site are degraded despite having moderate habitat value and that the mitigation will improve the habitat and slope stability functions and will not have a detrimental effect on critical areas and buffers offsite.

4. **The resulting development is compatible with other uses and development in the same land use district.**

Finding: The proposed house and associated structures and improvements are allowed uses in the R-5 single-family residential zone.

A. 20.30P.140 Critical Area Land Use Permit Decision Criteria – Decision Criteria

The Director may approve, or approve with modifications an application for a Critical Area Land Use Permit if:

1. **The proposal obtains all other permits required by the Land Use Code;**

Finding: The applicant must obtain a building permit and any other required construction permits. **See Permit Related Conditions of Approval in Section X of this report.**

2. **The proposal utilizes to the maximum extent possible the best available construction, design and development techniques which result in the least impact on the critical area and critical area buffer;**

Finding: The proposed house is located in the location that has the least impact and locates the proposed impacts within the structure setback from the steep slope. The proposal does remove trees but replaces trees and provides new understory vegetation that currently does not exist, except for invasive vegetation. The purpose of the critical area regulations in LUC 20.25H is to protect critical area function and value while still allowing reasonable development to occur. The proposed project results in a site that can be expected to retain existing habitat functions and improve upon them through the planting of native vegetation while allowing development and usable area for the property owners.

3. **The proposal incorporates the performance standards of Part 20.25H to the maximum extent applicable, and ;**

Finding: As discussed in Section III of this report, the performance standards of LUC 20.25H are being met by avoidance of disturbance of steep slopes and buffers.

4. **The proposal will be served by adequate public facilities including street, fire protection, and utilities; and;**

Finding: The proposed activity will be served by adequate public facilities.

5. The proposal includes a mitigation or restoration plan consistent with the requirements of LUC Section 20.25H.210; and

Finding: A mitigation planting plan has been submitted. An installation and maintenance surety will be required to ensure plant survival over the 5-year monitoring period. The sureties will be based on a cost estimate of all installation and maintenance costs. **See Mitigation Related Conditions of Approval in Section X of this report.**

6. The proposal complies with other applicable requirements of this code.

As discussed in this report, the proposal complies with all other applicable requirements of the Land Use Code.

IX. Conclusion and Decision

After conducting the various administrative reviews associated with this proposal, including Land Use Code consistency, City Code and Standard compliance reviews, the Director of the Development Services Department does hereby **approve with conditions** the Critical Areas Land Use Permit to construct a new house, associated improvements, and mitigation planting on the property. **Approval of this Critical Areas Land Use Permit does not constitute a permit for construction. A building permit is required and all plans are subject to review for compliance with applicable City of Bellevue codes and standards.**

Note - Expiration of Critical Area Permit Approval: In accordance with LUC 20.30P.150, a Critical Areas Land Use Permit automatically expires and is void if the applicant fails to file for a building permit or other necessary development permits within one year of the effective date of the approval.

X. Conditions of Approval

The applicant shall comply with all applicable Bellevue City Codes and Ordinances including but not limited to:

Applicable Ordinances	Contact Person
Clearing and Grading Code- BCC 23.76	Savina Uzunow, 425-452-7860
Utilities Code – BCC 24	Jason Felgar, 425-452-7851
Land Use Code- BCC Title 20	Drew Folsom, 425-452-4441
Noise Control- BCC 9.18	Drew Folsom, 425-452-4441

The following conditions are imposed under the Bellevue City Code referenced:

- 1. Building Permit Required:** Approval of this Critical Areas Land Use Permit does not constitute an approval of a building permit. A building permit that includes clearing and

grading must be submitted and issued before any construction may begin. Plans submitted as part of the building permit application shall be consistent with the activity permitted under this approval.

Authority: Land Use Code 20.30P.140, Clearing & Grading Code 23.76.035
Reviewer: Drew Folsom, Development Services Department
Savina Uzunow, Development Services Department

- 2. Mitigation Planting:** The proposed mitigation planting shown on the submitted planting plan included as reference document 1 is required to be installed. The planting plan is required to be submitted as part of the building permit application. All permanent and temporary disturbance is required to be mitigated and/or restored. The plans submitted with the building permit shall depict the extent of construction disturbance and provide restoration

Authority: Land Use Code 20.30P.140
Reviewer: Drew Folsom, Development Services Department

- 3. Cost Estimate:** A cost estimate is required to be submitted prior to building permit issuance for the costs to install, maintain, and monitor the planting for five years.

Authority: Land Use Code 20.30P.140
Reviewer: Drew Folsom, Development Services Department

- 4. Installation Surety:** In order to ensure mitigation planting is installed per plan an installation surety is required in an amount that is 150 percent of the cost to install the mitigation planting. The installation surety will be released upon installation of the mitigation and inspection by staff. The installation surety is required to be submitted prior to building permit issuance.

Authority: Land Use Code 20.30P.140
Reviewer: Drew Folsom, Development Services Department

- 5. Maintenance Surety:** In order to ensure the restoration is successfully established, a maintenance surety is required for an amount equal to 20 percent of the cost estimate. The surety shall be held for a period of five years from the date of successful installation. The maintenance assurance device will be released to the applicant upon receipt of documentation of reporting successful establishment in compliance with the performance standards described in the submitted critical areas report as reference document 3.

Authority: Land Use Code 20.30P.140
Reviewer: Drew Folsom, Development Services Department

- 6. Monitoring:** The planting area shall be maintained and monitored for 5 years as detailed in the monitoring plan, goals, and performance standards found in the submitted critical areas report reference document 3.

Annual monitoring reports are to be submitted to Land Use each of the five years. The reports, along with a copy of the planting plan, can be sent to Reilly Pittman at rpittman@bellevuewa.gov or to the address below:

Environmental Planning Manager
Development Services Department
City of Bellevue
PO Box 90012
Bellevue, WA 98009-9012

Authority: Land Use Code 20.30P.140; 20.25H.220
Reviewer: Drew Folsom, Development Services Department

- 7. Land Use Inspection Required:** Inspection of mitigation planting must be completed by the Land Use Planner as part of the building permit inspection process. A Land Use inspection will be added to the building permit.

Authority: Land Use Code 20.25H.210
Reviewer: Drew Folsom, Development Services Department

- 8. Geotechnical Recommendations:** All work is required to be carried out per the recommendations provided by the geotechnical engineer.

Authority: Land Use Code 20.30P.140
Reviewer: Drew Folsom, Development Services Department

- 9. Geotechnical Review:** The project geotechnical engineer must review the final construction plans, including all foundation designs. A letter from the geotechnical engineer stating that the plans conform to the recommendations in the geotechnical report and any addendums and supplements must be submitted to the clearing and grading section prior to issuance of the construction permit.

Authority: Clearing & Grading Code 23.76.050
Reviewer: Savina Uzunow, Development Services Department

- 10. Geotechnical Inspection:** The project geotechnical engineer must provide geotechnical inspection during project construction, including subgrades for foundations and footings, and any unusual seepage, slope, or subgrade conditions.

Authority: Clearing & Grading Code 23.76.050; 23.76.160

Reviewer: Savina Uzunow, Development Services Department

11. Rainy Season Restrictions: Due to steep slopes on the site, no clearing and grading activity may occur during the rainy season, which is defined as October 1 through April 30 without the written authorization of the Development Services Department. Should approval be granted for work during the rainy season, increased erosion and sedimentation measures, representing the best available technology must be implemented prior to beginning or resuming site work.

Authority: Bellevue City Code 23.76.093.A,

Reviewer: Savina Uzunow, Development Services Department